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**COMMENTS OF UPS REGARDING PROPOSED OCEAN TRANSPORTATION
INTERMEDIARY REGULATIONS**

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UPS Ocean Freight Services, Inc. (FMC License No. 016781N), UPS Europe SPRL and UPS Asia Group Pte. Ltd. and UPS Supply Chain Solutions, Inc. (FMC License No. 000275F) (collectively "UPS") offer the following comments in response to the Federal Maritime Commission's ("Commission's") proposed revisions to ocean transportation intermediary ("OTI") regulations.

The UPS NVOCCs are wholly-owned subsidiaries of United Parcel Service of America, Inc., a worldwide surface and air freight carrier and logistics and supply chain management service provider. Founded in 1907, UPS is the world's largest package delivery company and a provider of specialized multimodal transportation and logistics services, operating some 528 facilities in 120 countries worldwide. UPS, with 2013 consolidated corporate revenues of \$55.4 billion, has 424,000 employees worldwide with 344,200 in the United States. UPS makes some 16.9 million daily global deliveries. UPS carries general ocean freight world-wide as a non-vessel operating common carrier ("NVOCC") and the UPS logistics business serves all sectors of the general ocean freight industry worldwide.

UPS is pleased that the Commission and staff have moved forward on this project and enthusiastically supports the proposed revisions in general, but suggests certain changes that will promote more efficient administration of the regulations, benefitting both shippers and OTIs, and avoid uncertainty and unwarranted operating costs.

1. **Proposed Three-Year License Term.** Under current procedure OTI licenses have been issued for an indefinite period. Consistent with the Commission's decision to require license renewal every three years, the proposed new Section 515.14(c) states that licenses will be issued

for a period of three (3) years. Presumably this means that each license will have a fixed expiration date.

If licenses have a fixed expiration date there is a danger that even if the licensee is in good standing and submits everything needed for license renewal or extension on a timely basis, unforeseen administrative delays could result in sudden expiration of the license pending Commission action. While this could unintentionally occur for many reasons, a good example might be a situation where the Commission has a sudden surge of renewals, which will come at an irregular pace especially in the first few years, pushing up the time required for routine processing, and then when the license is about to expire, a snowstorm or some other event delays the Commission from taking final action for a few days. Another scenario which has occurred recently is a temporary federal government shutdown that prevents the Commission from issuing a new license approvals. If the OTI's license expires, it cannot accept new bookings or perform other duties to assist shippers or move cargo. Such an interruption could have disastrous consequences, stranding shipments and damaging the OTI's customer goodwill and credit ratings.

UPS suggests that a better alternative would be to add to the regulation a provision that notwithstanding the expiration date on an OTI license, if the licensee has submitted to the Commission timely renewal information at least thirty (30) days in advance, the license will be deemed automatically extended for a period of ten business days beyond the date on which the Commission takes action. In that manner, licenses will not be inadvertently terminated, and if the Commission were to issue a denial based on some error or omission it would give the licensee adequate time to fix the problem to avoid an unintended service interruption.

Another concept the Commission might consider is that whenever an OTI updates its FMC-18 with new corporate information or obtains approval to change or add a Qualifying Individual,

the Commission should treat such action as a license renewal, thus extending the term out for a fresh three-year period from that date. Because an FMC-18 update, and especially a QI change or addition, involves the Commission staff diligently looking at the completeness of the data and eligibility and fitness of the licensee, there is no need for the Commission to duplicate the process again possibly only shortly thereafter when the then-current three year term expires.

2. **Branch Office Bonding.** UPS strongly supports the Commission's decision to eliminate the requirement for branch office bonding for unincorporated branch offices through the proposed changes to Sections 515.4(b) and 515.21. This step will save considerable cost and administrative burdens for many OTIs.

3. **Definition of "Principal".** The Commission proposes to revise the definition of "principal" in Section 515.2(o) but states that this is just to make it more concise with no intended substantive change.

The current definition reads: "*Principal*, except as used in Surety Bond Form FMC-48, and Group Bond Form FMC-69, refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property."

The proposed revised definition reads: "*Principal*, with respect to a licensed ocean freight forwarder employed to facilitate the transportation of property, refers to the shipper, consignee, seller, or purchaser of such property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property."

Dropping of the words "who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property" could have significant unintended effects. In

many transactions, the forwarder has a contractual relationship with and obligations to the carrier, shipper and consignee, but has no contractual relationship with or fiduciary duty to the buyer and seller of goods, who may or may not be the shipper or consignee, or to any agents of buyer and seller, who may be entirely unknown to the forwarder. With those words eliminated, now the buyer and seller, and their undisclosed agents, will always be a "principal" even if the forwarder has no dealings with them or even where there is no knowledge of them. As a result, the forwarder will now have the obligation to monitor and report on possible errors or violations by such parties under the Commissions regulations at Section 515.31(f), even if it has no legal relationship with such parties or does not know who they are. The forwarder may also have obligations to account to such parties under Section 515.31(i), may have to disclose confidential information and cost data to them under Section 515.32(c) and (d) and recordkeeping obligations to them under Section 515.33(d). UPS believes this is not intended. By retaining the words "who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property" it would remain clear that a forwarder's obligations to the buyer and seller of goods only apply if such party has a direct contract with the forwarder or appears as the shipper or consignee on shipping documents.

4. **License Revocation Hearing Procedures.** The Commission proposes to modify the provisions of Section 515.17 to permit use of shortened procedures for license revocation hearings for OTIs, with Section 515.17(c) providing for formal hearing procedures under Section 502 of the Commission's Regulations only where civil penalties are sought. This leaves open the possibility for an abbreviated hearing process regarding other license denials or revocations, which may unintentionally abbreviate constitutionally required due process. A license denial or revocation, even without the threat of civil penalties, has grave consequences and would deprive

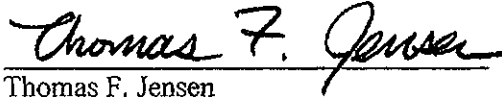
a licensee of its commercial livelihood and property. UPS understands the intent may be that the Commission would only utilize this procedure in "default" cases where the applicant or licensee does not appear or does not comply with the usual process in the Commission's Rules of Practice and Procedure at 46 CFR Part 502 ("Rules"), in which case there is no apparent reason to carry out the full process. UPS suggests that this section should state clearly that the abbreviated procedure only applies if the licensee fails to appear or respond to a notice of suspension or termination, and that in any situation in which the applicant or licensee formally appears and complies with the Rules, the regular provisions of Section 502 for assignment to an Administrative Law Judge, prehearing motions and discovery, presentation of evidence and hearing procedures, as well as appeal and review by the Commission, will continue to apply.

CONCLUSION

UPS again commends the Commission and staff for progressing this rulemaking. UPS looks forward to participating in the more competitive and innovative market for liner services that this rule will surely promote.

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Respectfully submitted,



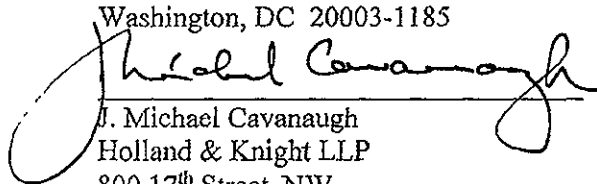
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